

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL JAY WILLIAMS,)
)
Plaintiff,)
)
v.) No. 4:18-CV-1388-RLW
)
U.S. DEPARTMENT OF EDUCATION,)
)
Defendant.)

MEMORANDUM AND ORDER

Plaintiff seeks leave to proceed in forma pauperis in this civil action against the United States Department of Education. The motion is granted.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

When reviewing a complaint under 28 U.S.C. § 1915(e), the Court accepts the well-pled facts as true. Furthermore, the Court liberally construes the allegations.

The Complaint

Plaintiff's statement of claim states, in whole:

1. My income tax was taken to pay off a student loan balance that's not mine
2. January 29, 2018
3. n/a
4. n/a
5. They fail[ed] to send me the right information[] and they kept sending me the wrong information.

For relief, plaintiff states "simply I just want my funds back."

Discussion

Plaintiff's complaint lists only conclusory allegations, which fail to state a claim as a matter of law. *See Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) (pro se pleadings should be construed liberally, "[a]t the very least, however, the complaint must contain facts which state a claim as a matter of law and must not be conclusory.") The Court has no information regarding the amount of income tax taken; the amount of the student loan balance; the account holder of the allegedly incorrect student loan; or any information or communication from the United States Department of Education to or from plaintiff.

Because plaintiff is proceeding pro se, the Court will provide plaintiff an opportunity to amend his allegations. Accordingly, plaintiff will be required to file an amended complaint, on a court-form, containing all of the allegations he wishes to bring against defendant. Plaintiff must follow the Court's instructions relating to the filing of his amended complaint, as set forth below, or he will face dismissal of his action, without prejudice.

Plaintiff is required to submit his amended complaint on a court-provided form, and it must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Rule 8(a) requires

that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought. And Rule 10(b) requires that a party must state its claims or defenses in separately numbered paragraphs, each limited as far as practicable to a single set of circumstances. In particular, plaintiff must articulate the factual circumstances surrounding defendant's alleged wrongful conduct. Plaintiff's failure to make specific and actionable allegations against the defendant will result in their dismissal from this case.

Plaintiff shall have twenty-one (21) days from the date of this Memorandum and Order to file his amended complaint. Plaintiff is warned that the filing of the amended complaint completely replaces the original complaint, and claims that are not re-alleged are deemed abandoned. *E.g., In re Wireless Tele. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005). If plaintiff fails to file his amended complaint within twenty-one (21) days, the Court will dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis is **GRANTED**. [ECF No. 2]

IT IS FURTHER ORDERED that the Clerk of Court shall provide to plaintiff, along with a copy of this Memorandum and Order, a blank civil complaint form for the filing of a civil complaint.

IT IS FURTHER ORDERED that plaintiff shall file an amended complaint, in accordance with the instructions set forth above, no later than twenty-one (21) days from the date of this Memorandum and Order

IT IS FURTHER ORDERED that if plaintiff fails to timely file an amended complaint or fails to comply with the instructions set forth above relating to the filing of the amended complaint, the Court shall dismiss this action without prejudice.

Dated this 29th day of August, 2018.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE